

mental health court program and, if successful, her seven year sentences would be suspended. If not successful, Appellant would be ordered to serve the seven year sentences in prison. During the guilty plea proceeding, the Assistant District Attorney stated that if Appellant is unsuccessful in mental health court the sentences would be served in the Department of Corrections ("DOC") and "[a]ll counts and cases to run concurrently as well." (4/23/15 Tr. 7). Appellant acknowledged the State's recommendation was also her understanding of the plea agreement and entered her pleas of guilty. Before accepting her pleas of guilty, Judge Wyatt stated that "[a]ll three of the sentences [would] run concurrent each with the other." (4/23/15 Tr. 11). Appellant's *Plea of Guilty Summary of Facts* form does not state whether the sentences would run concurrently or consecutively. (CF-2015-16 O.R. 14). A court minute issued after the hearing stated that if Appellant "is not successful [in the mental health court program] all suspended sentences will be served and will run concurrent with each other." (CF-2015-16 O.R. 18). In Case No. CF-2015-17, Appellant entered a plea of guilty to Falsely Personate Another to Create Liability, felony, and was convicted and sentenced to a term of one (1) year. Pursuant to her plea agreement and contract, Appellant was placed in the Anna McBride Court Program and, if successful, her one year sentence would be suspended. If not successful, Appellant would be ordered to serve the one year sentence in prison.

On November 6, 2015, the State filed in both cases an application to revoke Appellant from mental health court and to sentence her as provided in

the plea agreement. The application alleged Appellant had violated the program by failing to provide meeting verification four times; violating curfew or check-in three times; testing positive for methamphetamines and amphetamines on June 22, 2015; failing to appear for monthly hearing and being considered AWOL on July 13, 2015; and being charged with new crimes on August 19, 2015. On April 12, 2016, Appellant was ordered to enter the Safe Passages Drug and Alcohol treatment facility ("Safe Passages") until October 19, 2016, when she was ordered to return to the District Court. Appellant was warned not to walk away or be released from Safe Passages. On December 20, 2016, the State filed an amended application to revoke Appellant from mental health court and to sentence her as provided in the plea agreement. The amended application added a violation alleging that on June 3, 2016, Appellant walked away from Safe Passages and had been officially discharged from the program.

On January 11, 2017, the mental health court revocation hearing was held before Judge Wyatt. After hearing the evidence and arguments, Judge Wyatt found Appellant violated her mental health court program requirements. Judge Wyatt revoked Appellant from mental health court and imposed sentencing. In Case No. CF-2015-16, Appellant was sentenced to seven years imprisonment on each of Counts 1 and 2, with the sentences ordered to run consecutively. In Case No. CF-2015-17, Appellant was sentenced to one year imprisonment, with the sentence ordered to run concurrently with her sentences in Case No. CF-2015-16.

Appellant brings this appeal asserting three propositions of error:

- I. **THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT REMOVED APPELLANT FROM THE MENTAL HEALTH COURT PROGRAM.**
- II. **THE TRIAL COURT ERRED WHEN IT ORDERED THE SENTENCES IN COUNTS 1 AND 2 TO RUN CONSECUTIVE.**
- III. **APPELLANT'S JUDGMENT AND SENTENCE IN CASE NO. CF-2015-17 SHOULD BE CORRECTED TO REFLECT THE CORRECT CHARGE AS AMENDED BY THE STATE.**

ANALYSIS

In her first proposition, Appellant argues that the District Court abused its discretion by failing to order progressively increasing sanctions or provide incentives before removing Appellant from the mental health court program, as required by 22 O.S.Supp.2014, § 472(F). Appellant supports her argument by noting that she was only sanctioned for two of the eight violations she committed during her tenure in the mental health court program.

The decision to revoke or terminate from mental health court lies within the sound discretion of the trial court. *Tate v. State*, 2013 OK CR 18, ¶ 21, 313 P.3d 274, 281. The mental health court judge is required to recognize relapses and restarts in the program, and should order progressively increasing sanctions or provide incentives rather than removing the offender from the program, "except when the conduct of the offender requires revocation from the program." 22 O.S.Supp.2014, § 472(F). "At the revocation hearing, if the offender is found to have violated the conditions of the plea agreement or performance contract and disciplinary sanctions have been insufficient to gain compliance, the offender shall be revoked from the program and sentenced for

the offense as provided in the plea agreement.” 22 O.S.Supp.2014, § 472(F).

Appellant acknowledges that she has had several violations during her tenure in the mental health court program and that she received sanctions for some of those violations. The record shows that those sanctions were insufficient to gain her compliance. Appellant fails to acknowledge that her placement in Safe Passages was an increasing sanction and a final incentive before her removal from the mental health court program would be required. When Judge Wyatt allowed Appellant to be placed in Safe Passages, he specifically warned her not to walk away or be released from the program. Both of those things occurred. Judge Wyatt’s decision to grant the State’s application to remove Appellant from the mental health court program and impose her sentencing cannot be considered an abuse of discretion. *Tate, supra*. Proposition I is denied.

In her second proposition, Appellant claims that her plea of guilty in Case No. CF-2015-16 was based upon an agreement from both the State and the District Court that her seven year sentences on Counts 1 and 2 in Case No. CF-2015-16 would run concurrently.¹ Appellant notes that, after ordering her removal from the mental health court program, the District Court ordered that the sentences on those two counts would run consecutively. Appellant is arguing that the District Court abused its discretion by not sentencing her as provided in the plea agreement, pursuant to 22 O.S.Supp.2014, § 472(F).

In support of her argument that her sentences were ordered to run

¹ Appellant’s third sentence in this appeal, her one year sentence in Case No. CF-2015-17, was ordered to run concurrently with her two seven year sentences in Case No. CF-2015-16.

concurrently, Appellant cites to the transcript of her guilty plea proceedings on April 23, 2015. When announcing the recommended plea agreement, the Assistant District Attorney stated that if Appellant is unsuccessful in mental health court the sentences would be served in DOC and “[a]ll counts and cases to run concurrently as well.” (4/23/15 Tr. 7). Appellant acknowledged the State’s recommendation was also her understanding of the plea agreement when she entered her pleas of guilty. (4/23/15 Tr. 8). Judge Wyatt stated that “[a]ll three of the sentences [to which Appellant pled would] run concurrent each with the other” when he accepted Appellant’s pleas of guilty. (4/23/15 Tr. 11). Appellant also cites to a Court Minute in this appeal record that was prepared after Appellant’s guilty plea proceedings on April 23, 2015. The Court Minute provides that if Appellant “is not successful [in the mental health court program] all suspended sentences will be served and will run concurrent with each other.” (CF-2015-16 O.R. 18).

The State first argues that, because Appellant’s second proposition challenges the District Court’s Judgment and Sentence, it should be denied because it is outside the scope of an acceleration appeal, which is limited to the validity of the acceleration order. However, when Appellant entered her plea of guilty in Case No. CF-2015-16, all parties agreed that Appellant was, or would be, convicted and sentenced to terms of seven years on each of Counts 1 and 2; and thus her placement and performance in mental health court had no bearing on the conviction and sentences. Appellant’s performance in mental health court would only determine whether her seven year sentences would be

suspended or whether she would serve those sentences in DOC. Thus, Appellant's revocation from mental health court in Case No. CF-2015-17 effectively resulted in the revocation of her suspended sentences. Appellant is challenging the validity of the portion of the District Court's Judgment and Sentence revoking her suspended sentence, which is within the scope of a revocation appeal. Rule 1.2(D)(4), *Rules, supra*. Contrary to the State's argument, an appeal of Appellant's Judgment and Sentence in Case No. CF-2015-16, through a petition for writ of *certiorari*, is not available to Appellant following the revocation of a suspended sentence. *Tate v. State*, 2013 OK CR 18, ¶¶ 9-11, 313 P.3d 274, 279.

A second argument made by the State is that Appellant fails to cite any law to support the arguments in her second proposition. However, Appellant has cited the Anna McBride Act, which only authorizes the District Court to sentence an offender revoked from the mental health court program as provided in the plea agreement. 22 O.S.Supp.2014, § 472(F).

The State's substantive response to Appellant's second proposition is basically that neither the *Plea of Guilty Summary of Facts* form in Case No. CF-2015-16 nor other records in the case specifically state that the sentences in Counts 1 and 2 are to be run concurrently, and therefore by operation of law those sentences are presumed to run consecutively.² See 22 O.S.2011, § 976. In terminating Appellant from mental health court and ordering the sentences in Counts 1 and 2 to be served consecutively, Judge Wyatt also stated he did

² The *Plea of Guilty Summary of Facts* form also does not specifically state that those sentences are to run consecutively.

not find any reference in the court minutes or in the plea agreement that the sentences in Counts 1 and 2 should run concurrently each with the other. However, parties do not rely on the operation of law in defining the terms of a plea agreement and sentencing in reliance on the operation of law is not a determination of what is actually provided in the plea agreement, as is required by Section 472(F).

Moreover, the oral pronouncements found in the transcript of Appellant's guilty plea proceedings on April 23, 2015, clearly show the State describing Appellant's plea agreement as providing that "[a]ll counts and cases to run concurrently as well" and Judge Wyatt declaring "[a]ll three of the sentences [to which Appellant pled would] run concurrent each with the other." (4/23/15 Tr. 7, 11). Oral pronouncements of sentences control over written conflicting orders unless the orally pronounced sentence is ambiguous. *LeMay v. Rahhal*, 1996 OK CR 21, ¶¶ 18-19, 917 P.2d 18, 22. Finally, we are not convinced that the Court Minute entered after Appellant's plea of guilty proceedings on April 23, 2015, does not reference concurrent sentences or that it is ambiguous when it states that "ALL SUSPENDED SENTENCES WILL BE SERVED AND WILL RUN CONCURRENT WITH EACH OTHER." (CF-2015-16 O.R. 18). This Court finds sufficient documentation of the provisions of Appellant's plea agreement in this record to hold that on remand the District Court shall amend the Judgment and Sentence in Case No. CF-2016-16 to reflect that the seven year sentence in Count 2 shall run concurrently with the seven year sentence in Count 1. 22 O.S.Supp.2014, § 472(F).

In proposition III, Appellant claims that the District Court amended the charge in case No. CF-2015-17 from false personation to obstruction, but listed false personation rather than obstruction when it issued the Judgment and Sentence. Appellant is claiming that the District Court committed a scrivener's error by failing to reflect the amendment in the Judgment and Sentence. This Court has noted that a request to correct a scrivener's error should first be presented to the District Court by motion for order *nunc pro tunc*. *Grimes v. State*, 2011 OK CR 16, ¶ 21, 251 P.3d 749, 755. Appellant has not made such a request to the District Court; therefore her third proposition should be denied.

DECISION

The order of the District Court of Craig County revoking Appellant from the mental health court program in Case Nos. CF-2015-16 and CF-2015-17 is **AFFIRMED**, but the matter is **REMANDED** to the District Court to amend the Judgment and Sentence in Case No. CF-2016-16 to reflect that the seven year sentence in Count 2 shall run concurrently with the seven year sentence in Count 1.

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018), the **MANDATE** is **ORDERED** issued forthwith upon the filing of this decision with the Clerk of this Court.

**AN APPEAL FROM THE DISTRICT COURT OF CRAIG COUNTY
THE HONORABLE HARRY M. WYATT, III,
ASSOCIATE DISTRICT JUDGE**

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LUMPKIN, P.J.: CONCUR
LEWIS, V.P.J.: CONCUR
KUEHN, J.: CONCUR
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